



January 19, 2021

Clerk of the Court  
U.S. District Court for the Eastern District of California  
510 19th Street, Suite 200  
Bakersfield, CA 93301

Re: Notice of Supplemental Authority; *Center for Biological Diversity v. Haaland, et al.*, No. 1:22-cv-00335-ADA-CDB

Pursuant to Local Rule 230(m)(2), Plaintiff hereby submits as supplemental authority the attached Opinion of the Ninth Circuit Court of Appeals issued on December 21, 2022 in *Center for Food Safety, et al. v. Regan, et al.*, 2022 U.S. App. LEXIS 35277, \_\_ F.4th \_\_ (9th Cir. Dec. 21, 2022) (Nos. 19-72109, 19-72280) in support of its Memorandum in Support of its Motion for Summary Judgment (ECF No. 15-2), and its Reply Memorandum in Support of its Motion for Summary Judgment and In Opposition to Defendants' Cross-Motion for Summary Judgment (ECF No. 26).

As in the instant case, *Center for Food Safety, et al. v. Regan, et al.* involved a challenge to a federal agency's failure to comply with the Endangered Species Act. *See, e.g., id.* at 18-24. There, the Ninth Circuit held that "limited resources" do not excuse violations of clear statutory commands, *id.* at 18-19, noting that "an agency cannot ignore the will of Congress just because it genuinely believes that it has a good reason or excuse for doing so." *Id.* (citation omitted). *See also id.* at 22 ("[w]hen an agency deliberately ignores Congress's legislative command, it undermines the will of the people and ultimately our constitutional structure of government."); *id.* at 24 (describing EPA's "whack-a-mole strategy for complying with the ESA: It does little to comply with the law and then devotes resources once it has been sued—and then this process repeats itself.").

Respectfully submitted,

/s/ Margaret A. Coulter

Margaret A. Coulter (CA Bar No. 304708)  
mcoulter@biologicaldiversity.org

Lauren A. Parker (DC Bar No. 1670885)  
lparker@biologicaldiversity.org  
*Pro hac vice*

Jason C. Rylander (DC Bar No. 474995)  
jrylander@biologicaldiversity.org  
*Pro hac vice*

CENTER FOR BIOLOGICAL DIVERSITY  
1411 K Street NW, Suite 1300  
Washington, DC 20005  
Telephone: (202) 961-4820

*Attorneys for Plaintiff*

CC: All counsel of record